

development rendered the case moot. Dkt. 21. On December 2, 2020, Respondent filed a letter arguing that “[P]etitioner’s death deprives this Court of subject matter jurisdiction, and the case should be dismissed.” Dkt. 22.

The question for the Court is whether a petitioner’s death renders a habeas petition moot. It appears that the Second Circuit has only addressed this issue in an unpublished decision. In *Bumpus v. Warden, Clinton Correctional Facility*, the Second Circuit, without explanation, dismissed as moot an appeal of a denial of a § 2254 habeas petition after the petitioner died while the appeal was pending. 426 F. App’x 21, 22 (2d Cir. 2011). At least one court in this District also dismissed a habeas petition as moot when the petitioner died before the district court issued its decision. *See Rivera v. Pearlman*, No. 02 Civ. 2399 (LAK), 2004 WL 533333, at *1 (S.D.N.Y. Mar. 16, 2004); *see also Hoppe v. Griffin*, No. 17 Civ. 170 (JKS), 2019 WL 227388, at *3-4 (N.D.N.Y. Jan. 16, 2019) (same); *Muller v. Hofmann*, No. 06 Civ. 118 (JGM), 2006 WL 3526921, at *1 (D. Vt. Dec. 5, 2006) (same).

With no controlling authority on point, the Court looks to other Circuits. Every Court of Appeals that has had occasion to address this issue has held that a habeas petition is mooted by a petitioner’s death. *See Keitel v. Mazurkiewicz*, 729 F.3d 278, 280 (3d Cir. 2013); *Bruno v. Sec’y, Fla. Dep’t of Corr.*, 700 F.3d 445, 445 (11th Cir. 2012) (per curiam); *Garceau v. Woodford*, 399 F.3d 1101, 1101 (9th Cir. 2005); *McMillin v. Bowersox*, 102 F.3d 987, 987 (8th Cir. 1996) (per curiam); *McClendon v. Trigg*, 79 F.3d 557, 559 (7th Cir. 1996); *Knapp v. Baker*, 509 F.2d 922, 922 (5th Cir. 1975) (per curiam). This conclusion is also in line with dicta from the Supreme Court and the Second Circuit. *Lockhart v. McCree*, 476 U.S. 162, 168 n.2 (1986) (noting that when a habeas petitioner died prior to the district court’s decision, “his case became moot”); *Krantz v. United States*, 224 F.3d 125, 127 (2d Cir. 2000) (noting that the court did “not disagree” with the practice

of sister circuits treating a § 2255 petition as moot after the petitioner's death).


The Court is persuaded by these decisions. “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “[T]he traditional function of the writ is to secure release from illegal custody.” *Id.* In accordance with this understanding, Petitioner here sought release from custody. *See* Dkt. 2 at 15. However, his death necessarily means that he is no longer “in custody.” 28 U.S.C. § 2254(a); *see also id.* § 2241(c). Thus the Court can no longer grant the relief he sought. *Cf. Calderon v. Moore*, 518 U.S. 149, 150 (1996) (per curiam) (holding that a habeas petition is not moot so long as the court could grant some relief). The Court concludes that Petitioner's death renders his habeas petition pursuant to 28 U.S.C. § 2254 moot because he is no longer “in custody” and the Court could not grant him any relief that he sought.

Conclusion

The petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed as moot. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: March 7, 2021
New York, New York



JOHN P. CRONAN
United States District Judge